



# ELECTRONIC COMMUNICATIONS AMENDMENT BILL

NAB PRESENTATION

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## **NAB DELEGATION**

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# Introducing the NAB

- The NAB is the leading representative of South Africa's broadcasting industry, comprising all three tiers of broadcasters -public, commercial and community, as well as signal distributors, training institutions and industry associates.
- The NAB is a voluntary association funded by its members.

# Mandate of the NAB

- To ensure a broadcasting system that provides choice and diversity for audiences.
- To create a favourable climate for broadcasters to operate within.
- To ensure a broadcasting industry grounded in the principles of constitutionalism, democracy, diversity and freedom of expression.
- To ensure members adhere to the Code of Conduct as administered by ICASA and/or BCCSA.

# Members of the NAB

## Membership includes:

- The three television services and 19 radio services of the **SABC**.
- Licensed private/commercial radio broadcasters (includes media groups: **Primedia, Kagiso Media, Tsiya Group, AME, MSG Afrika, TMG, Classic FM, Kaya FM and YFM**).
- All licensed commercial television broadcasters ( **e.tv, Multichoice, M-Net, and Starsat/ODM**).
- A host of community radio broadcasters and community television broadcaster, Faith Terrestrial.
- Both the licensed broadcast signal distributor and the selective and preferential broadcast signal distributors, **Sentech** and **Orbicom**.
- Associate members including **Nemisa, Media Connection, and ACM**.

# ELECTRONIC COMMUNICATIONS AMENDMENT BILL



## Focus of NAB Submissions

- Institutional arrangements
- Spectrum management
- High demand spectrum – implications for broadcasters
- Frequency of licences
- B-BBEE compliance
- Inter-governmental policy processes likely to impact the Bill

# Institutional arrangements

## *The independence of ICASA - s30*

- Section 192 of the Constitution of the Republic of South Africa provides for the independent regulation of broadcasting
- The independence of the regulator and regulation is further safeguarded by section 3(4) of the ECA
- The Bill introduces a new provision in terms of which ICASA must now comply with ministerial policies and policy directions in its administration and management of spectrum
- This amendment weakens the independent regulation of broadcasting
- The NAB strongly recommends that the Bill be revised to give meaningful effect to ICASA's independence

# Spectrum management

## Administration of spectrum - s30

- Spectrum is assigned for services including broadcasting services in accordance with the National Radio Frequency Plan
- The effect of the proposed amendments is that assignment of all spectrum is now placed squarely within the purview of the Minister of Telecommunications and Postal Services
- A far greater role is needed for the Minister of Communications on issues related to broadcasting spectrum

# Spectrum management

## Spectrum sharing – s31C

- The Bill proposes provisions for spectrum sharing subject to the approval of ICASA. However, this type of capacity sharing is not practical for broadcasters
- The most practical kind of ‘capacity sharing’ for the broadcasting industry is infrastructure sharing wherein antennas and combiners are shared following engineering consideration and careful tuning thereof
- Therefore, spectrum sharing must be approved only after it has been determined that such sharing will not cause any harmful interference

# Spectrum management

## Spectrum sharing – s31C

- The NAB recommends an additional subsection in section 31C(2) which reads as follows:

*The Authority may not approve spectrum sharing if it will -  
(d) cause harmful interference.*

# Spectrum management

## Spectrum re-farming – s31D

- The NAB understands that the demand for new technological services is growing so fast that it has resulted in spectrum re-farming
- However, it is important to ensure that the impact of spectrum re-farming on the broadcasting industry is given due regard to ensure that licensed broadcasters are not squeezed out as a result of competition for limited frequencies on the radio spectrum over which they broadcast
- The DTPS must ensure that the band 470 – 694 MHz remains protected for terrestrial television broadcasting services

# High demand spectrum – implications for broadcasting

## High demand spectrum - s31E

- Broadcasters have a number of digital terrestrial television transmitters operating in the 700 MHz and 800 MHz bands. After analogue switch-off, these transmitters need to be migrated to below 694 MHz following a process of restacking
- In the absence of a clear indication of what constitutes high demand spectrum, the NAB can only assume that the high demand spectrum will include the 700 MHz and 800 MHz bands
- Any assignment and use of these bands while aforementioned transmitters are still in operation will result in serious interference and prejudice to broadcasters
- The NAB respectfully submits that the timelines for the determination, assignment and ultimate use of the high demand spectrum should take into account the Broadcasting Digital Migration and the restacking processes as well as the spectrum needs of broadcasters

# Frequency of licences

- The Bill proposes that spectrum licences will be renewable annually
- While this could be appropriate for some licensees, individual service licensees – who make substantial long-term investments in their infrastructure and networks – require a different approach
- The NAB proposes that the spectrum licence should be for the same period as the service licence

## B-BBEE compliance

- Whilst the Bill requires ICASA to promote the B-BBEE ICT Sector code, it is not clear whether non-adherence to the ICT Sector Code will be dealt with by ICASA, or whether ICASA is to refer the matter to the ICT Sector Council
- The Bill does not clearly provide for ICASA's role in enforcing the sector code as it does not unequivocally empower ICASA to deal with any instances of non-adherence to the sector code
- The NAB submits that this *lacuna* can best be addressed through engagements between the Ministers concerned on the role of ICASA and the B-BBEE ICT sector council respectively

## B-BBEE compliance

- The incorporation B-BBEE ICT sector code or the B-BBEE Act is not consistently carried through in the Bill as the reference to “historically disadvantaged groups” in section 9 of the ECA has not been amended
- Furthermore, the Bill prescribes timelines within which ICASA is to develop regulations in respect of the B-BBEE ICT sector codes
- The NAB respectfully advises against this approach, and urges the DTSPS to rather facilitate engagements between ICASA and the B-BBEE ICT Sector council and to remand any timelines to regulations as may be published from time to time

# Inter-governmental policy processes likely to impact the Bill

- The Bill also seeks to address competition related matters within the sector. On 1 December 2017 the Economic Development Department (EDD) published the Competition Amendment Bill (Competition Bill)
- The Competition Bill seeks to address the structural challenges in the South African economy which have been identified by the EDD, as well as to promote institutional and procedural efficiency in order to improve the effectiveness of the Competition Commission, Competition Tribunal as well as the Competition Appeal Court
- We trust that the DTPS and EDD will engage and coordinate with each to ensure coherence in the regulatory and policy framework for competition related matters

# Inter-governmental policy processes likely to impact the Bill

- It is anticipated that the DoC will be publishing a Green Paper on Audio-visual Content which will no doubt have implications on the institutional arrangements as proposed in the Bill, as well as on critical issues regarding frequency spectrum assignment, allocation and management
- The regulation of audio-visual content will also affect all licensees in the broader ICT industry including both service based competitors (without spectrum licences) and those that hold both spectrum and service licenses

# Inter-governmental policy processes likely to impact the Bill

- The DTPS is no doubt aware of the potential for the Bill to be drawn out over a substantial period of time should the policy pronouncements from the DTI and DoC not be aligned with the objects of the Bill
- The NAB therefore urges the respective departments to align their approaches

# Conclusion

- The NAB advises the DTSPS against legislating timelines within which regulations are to be published, and recommends that instead a thorough SEIAS should be conducted with a specific focus on the capacity of ICASA and the newly established institutions vis-à-vis the proposed obligations pursuant to provisions of the Bill
- The NAB further recommends that the DTSPS engage broadcasting spectrum licensees who are preparing for DTT migration to better understand the future spectrum management process

# Conclusion

- The NAB notes that inter-related amendments to other key legislation required to give full expression to the policy framework for the transformation of South Africa into an inclusive and innovative digital and knowledge society as expressed in the White Paper are still in development
- The timing of when/whether these pieces of legislation will be made public is still unknown and will impact on the comments made in this first round of written submissions on this Bill
- In conclusion, the NAB thanks the DTSPS for the opportunity to make this oral submission



THANK YOU

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